

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,667

)

Appeal of )

)

INTRODUCTION

The petitioners, Mr. and Mrs. R., appeal the decision by the Department of Social Welfare denying their application for ANFC. The issue is whether Mr. R., the stepfather of Mrs. R.'s child, must be included in the family's application.<sup>(1)</sup>

FINDINGS OF FACT

The facts are not in dispute. Until recently, Mrs. R. and her young child received ANFC as a household of two persons based on the absence of the child's natural father.

When the Department learned that Mrs. R. had married Mr. R. it terminated Mrs. R.'s ANFC grant and advised her that she could reapply as a household of three persons if Mr. R. was either incapacitated or unemployed. The petitioners did reapply but were denied (in a decision dated February 7, 1994) because Mr. R. was employed and had earnings in the

previous 30 days that brought the household over the ANFC maximum.<sup>(2)</sup>

The basis of the petitioners' appeal of this decision is their contention that the Vermont law on stepparentage, 15 V.S.A. § 296, absolves a stepparent from responsibility for supporting a stepchild unless it can be shown that the natural parent of that child is unable to provide support.

The natural father of Mr. R.'s stepchild lives out of state and pays no support for the child.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § 2330 includes the following provision:

Under Vermont Law (VSA 15 Section 201, Section 291 as amended by the 1971 Session, and Section 295 as added by the 1972 Adjourned Session of the Vermont General Assembly) stepparents have liability equal to natural parents for support of stepchildren under the age of eighteen.

However, if the absent parent is a stepparent to the child(ren) in the assistance group and is divorced, legally separated, or living apart from the applicant/recipient spouse, support from the stepparent is not pursued because absence terminated his or her financial obligation to the children.

Where an applicant for or a recipient of assistance is married to a person other than the father of the children for whose benefit she makes application or receives assistance, determination of initial or continued eligibility shall be made on the same basis as if the stepfather were the natural father.

The petitioners' argument that the above provision is contrary to the Vermont law on stepparentage misapprehends the clear meaning and intent of that law. 15 V.S.A. § 296 provides as follows:

A stepparent has a duty to support a stepchild if they reside in the same household and if the financial resources of the natural or adoptive parents are insufficient to provide the child with a reasonable subsistence consistent with decency and health. The duty of a stepparent to support a stepchild under this section shall be coextensive with and enforceable according to the same terms as the duty of a natural or adoptive parent to support a natural or adoptive child including any such duty of support as exists under the common law of this state, for so long as the marital bond creating the step relationship shall continue.

The above law is clear, as the Vermont Supreme Court has affirmed<sup>(3)</sup>, that the duty of a stepparent to support a stepchild is "coextensive" with the duty owed by the natural parent. The petitioners do not allege that the child's natural father has the means to fully support the child, but they argue that it is the Department's burden under the above statute to prove that the natural father cannot do so, or else pay them ANFC.

When Mrs. R. was on ANFC the Department began pursuing support from the natural father, but had not been successful as of the time ANFC grant was terminated. The petitioners are free to avail themselves of the Vermont For Kids program or other legal help to continue to seek support from the child's natural father. 15 V.S.A. § 296 certainly gives the petitioners a cause of action against the natural father as an obligor of support for the child. However, it does not require the Department to pay ANFC for the child's support simply because both the natural father and the stepfather choose not to financially support the child.

Inasmuch as the Department's decision in this matter is consistent with the applicable law and regulations it must be affirmed.

###

1. Copies of written arguments submitted by the parties were furnished to members of the Board.
2. Mr. R. had begun working in January, 1994. As of about two weeks after their application for ANFC Mr. R. also would have been disqualified from ANFC on the basis of being employed more than 100 hours in the previous month. See W.A.M. § 2333.1(3).

3. Ainsworth v. Ainsworth, 154 Vt. 103 (1990).